

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4609 OF 2018

Uttam Bajirao Powar	 Petitioner
V/s.	
Bapusaheb Shankarrao Kamberkar	 Respondent

Mr. Prashant Bhavake for the Petitioner.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25TH APRIL, 2018.

P.C. :

1. Heard Mr. Bhavake, learned counsel for the Petitioner.
2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 23th November 2017, passed by the Civil Judge, Junior Division, Kale(Kheriwade), below the application at “Exhibit-41” filed in Regular Civil Suit No.82 of 2017.
3. The application at “Exhibit-41” was filed by the Respondent-Plaintiff for amendment of the plaint, under Order 6 Rule 17 of the Civil Procedure Code, 1908. The amendment sought was in respect of the subsequent developments, that had happened during pendency of the Suit.
4. Respondent has filed this Suit for injunction, restraining the

Petitioner from carrying out construction. Along with the Suit, Respondent had filed the application for interim injunction. The said application was allowed on 15th March 2012. Despite that, the Petitioner continued to carry out construction and hence, Miscellaneous Application No.18 of 2012 was also filed, under Order 39 Rule 2-A of CPC. As during pendency of the Suit, the construction was completed by the Petitioner, Respondent was constrained to seek the consequential relief of removal of the construction, made by encroachment, by way of amendment.

5. As this development has happened during the pendency of the Suit, the Trial Court was justified in allowing the application for amendment of the Suit to bring on record these facts, so that the matter can be decided effectually, completely and finally between the parties.

6. The only contention raised by learned counsel for the Petitioner is that, the said application was allowed at the belated stage, after the trial has commenced. However, having regard to the fact that, it is to bring on record the subsequent development, no fault can be found in the impugned order passed by the Trial Court.

7. Hence, the Writ Petition, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]